

For: State and County Offices**Residential Lead-Based Paint (LBP) Hazard Reduction****Approved by:** Acting Deputy Administrator, Farm Programs**1 Overview****A****Background**

The Environmental Protection Agency (EPA) and the Department of Housing and Urban Development (HUD) published new regulations on the control of hazards associated with lead-based paint (LBP) in all housing associated with the Federal Government. The purpose of these regulations is to reduce the number of children exposed to harmful levels of lead associated with paint, dust, and bare soil that may be found in and around older homes. LBP is the major remaining source of childhood exposure to lead and is responsible for most cases of childhood lead poisoning today.

These new regulations implement Sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, Title X “ten” of the Housing and Community Development Act of 1992. Sections 1012 and 1013 of Title X amended the Lead-Based Paint Poisoning Prevention Act of 1971, the basic law covering LBP in Federally associated housing. The new HUD regulations are found at Title 24 of the Code of Federal Regulations (CFR) Part 35 and reference procedures described in EPA regulations at 40 CFR Part 745.227.

The HUD LBP regulation sets forth specific requirements for all Federally owned residential property and property receiving Federal assistance. HUD’s LBP regulation applies to Farm Service Agency (FSA) in the disposal and management of inventory property on which there are residences, as well as to FSA’s loan making activities involving residential properties. The new LBP regulation changed FSA’s responsibilities by mandating that the Agency perform more extensive LBP inspection and abatement procedures than were previously required.

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Disposal Date

December 1, 2002

DistributionState Offices; State Offices relay to County
Offices

1 Overview (Continued)

A

Background (Continued)

The current FSA regulation that addresses compliance with the Lead-Based Poisoning Prevention Act of 1971 is found at 7 CFR, Part 1924, subpart A, Exhibit H. A new FSA regulation is being developed for compliance with the HUD LBP regulation. This notice will provide guidance for complying with LBP regulations until the new FSA regulation is published.

B

Purpose

This notice provides guidance on implementing HUD and EPA regulations on LBP hazards associated with housing.

C

Definitions

The following definitions relate to residential LBP hazard reduction:

- An abatement is any set of measures designed to permanently eliminate LBP hazards. These measures must be implemented by firms and individuals certified to do so.
 - A clearance examination is an activity conducted following LBP hazard reduction activities to determine that the hazard reduction activities are complete and that no soil-lead hazards or settled dust-lead hazards exist in the dwelling unit or worksite. The process includes a visual inspection and collection and analysis of environmental samples. The clearance examination must be completed by a certified inspector or risk assessor who was not involved in performing the lead hazard control activities.
 - An interim control is a set of measures designed to reduce temporarily human exposure or likely exposure to LBP hazards. These measures may include specialized cleaning, repairs, maintenance, temporary containment, ongoing monitoring of LBP hazards or potential hazards, and establishment and operation of management and resident education programs.
 - An LBP inspection is a surface-by surface investigation by a certified inspector or risk assessor to determine the presence of LBP and the provision of a report explaining the result.
 - Paint testing is the process of determining, by a certified LBP inspector or assessor, the presence or absence of LBP on deteriorated paint surfaces or painted surfaces to be disturbed or removed.
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1 Overview (Continued)

C

Definitions (Continued)

- A risk assessment is an on-site investigation performed by a certified LBP risk assessor to determine the existence, nature, severity, and location of LBP hazards and the provision of a report to the individual or firm having the risk assessment conducted explaining the results of the investigation and options for reducing LBP hazards.
- Safe work practices, as described in 24 CFR 35.1350, are work practices that do not use prohibited paint removal methods and protect occupants, their belongings, and the environment from lead contamination. Renovators may receive HUD or EPA training on safe work practices, but there is currently no certification process or requirement.

Safe work practices are not required when maintenance or hazard reduction activity does not disturb painted surfaces that total more than:

- 2 square meters (20 square feet) on exterior surfaces
- 0.2 square meters (2 square feet) on interior surfaces
- 10 percent of the total surface area on an interior or exterior type of component with small surface area.
- Target housing is any housing constructed before 1978, except housing for the elderly or persons with disabilities, unless any child who is less than 6 years of age resides or is expected to reside in such housing or any zero-bedroom dwelling.
- A zero-bedroom dwelling is a residential dwelling in which the living spaces are not separated from the sleeping area. The term includes:
 - efficiencies
 - studio apartments
 - dormitory or single room occupancy housing
 - military barracks
 - rentals of individual rooms in residential dwellings.

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1 Overview (Continued)

D

Contacts

If there are any questions about this notice or LBP hazard issues, you may contact either of the following:

- FSA State Environmental Coordinator
 - James Fortner, Conservation and Environmental Programs Division at 202-720-5533 or e-mail at james_fortner@wdc.fsa.usda.gov.
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2 Implementation Responsibilities

A

General Requirements for the Sale or Lease of Target Housing

24 CFR, Part 35, subpart A imposes the following requirements on the sale or lease of any target housing. These requirements apply directly to FSA when selling or leasing property owned by FSA. FSA will use all practicable means to ensure that these requirements are met in real estate transactions where FSA is the seller or lessor.

- Sellers and landlords must disclose known LBP hazards and provide available reports to buyers or renters.
- Sellers and landlords must give buyers and renters the pamphlet developed by EPA, HUD, and the Consumer Protection Safety Commission (CPSC) entitled, "Protect Your Family from Lead in Your Home".

Note: See paragraph 3 for information on obtaining the pamphlet and other reference materials.

- Home buyers will be allowed a 10-day period to conduct an LBP inspection at their own expense.

Note: This waiting period may be waived by the buyers and Exhibit 1 provides contingency language to be inserted in sales contracts executed by FSA to define or waive the inspection period.

- Sales contracts and leasing agreements must include certain notification and disclosure language.

Note: Exhibit 2 provides a notification and disclosure statement used by FSA for property sales and Exhibit 3 provides a notification and disclosure statement used by FSA for property leases.

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2 Implementation Responsibilities (Continued)

B

Disposition or Lease of Residential Property Owned by FSA

FSA must implement the following procedures to eliminate, to the extent practicable, LBP hazards before the sale or lease of FSA-owned property, which includes target housing, see 24 CFR, Part 35.

IF the property was constructed...	THEN FSA will...
before 1960	<ul style="list-style-type: none">• have a risk assessment and an LBP inspection of the property performed, see 24 CFR 35.210(a)• abate all LBP hazards identified in the above risk assessment <p>Note: An abatement shall not be considered complete until a clearance examination has been completed and the clearance levels set forth in 40 CFR 745.227(e)(8) have been achieved, see 24 CFR 35.210(b).</p> <ul style="list-style-type: none">• in the case where abatement is not completed before the closing of the sale, FSA will ensure, with the following deed language, that abatement is carried out by the purchaser before occupancy of the property, see 24 CFR 35.210(b). “The Grantee is restricted from inhabiting or allowing the occupation of _____ (include a brief description of the dwelling) until the LBP hazards of the said dwelling have been abated according to the requirements of 24 CFR Part 35 and appropriate documentation has been provided to the Grantor.”• make available the results of the risk assessment and LBP inspection to prospective purchasers, see 24 CFR 35.88.
in or after 1960 but before 1978	<ul style="list-style-type: none">• have a risk assessment and a LBP inspection of the property performed, see 24 CFR 35.215• make available the results of the risk assessment and LBP inspection to prospective purchasers, see 24 CFR 35.88.

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2 Implementation Responsibilities (Continued)

C

Renovation or Repair of Residential Property Owned by FSA

FSA must minimize LBP hazards associated with renovation or repair work carried out on FSA-owned target housing.

In all cases, FSA must implement and document the following procedures:

- provide LBP informational pamphlet to occupants, see 24 CFR 35.910
- perform paint testing on all painted surfaces that will be disturbed or replaced during renovation or repair work, or presume that these painted surfaces are coated with LBP, see 24 CFR 35.930(a)
- provide notice to the occupants of the results of LBP hazard evaluation and reduction activity, see 24 CFR 35.125(a) and (b).

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2 Implementation Responsibilities (Continued)

C

**Renovation or
Repair of
Residential
Property Owned
by FSA
(Continued)**

The following additional practices must be implemented and documented based on estimates of the cost of repairs or renovations.

IF the estimated cost of repairs or renovations is...	THEN FSA must...
less than or equal to \$5,000 and LBP was found or assumed to be present on surfaces to be disturbed or replaced.	<ul style="list-style-type: none"> • implement safe work practices, see 24 CFR 35.930(b)(2) • repair disturbed paint surfaces, see 24 CFR 35.930(b)(2) • perform a clearance examination of the worksite, see 24 CFR 35.930(b)(3)
greater than \$5,000 and less than or equal to \$25,000	<ul style="list-style-type: none"> • conduct a risk assessment of the dwelling unit before rehabilitation work begins, see 24 CFR 35.930(c)(2) • establish interim control of all LBP hazards identified by the risk assessment, paint testing, or created as a result of rehabilitation or renovation work, see 24 CFR 35.930(c)(3) • perform a clearance examination of the affected site, see 24 CFR 35.1330(a)(3)
greater than \$25,000	<ul style="list-style-type: none"> • conduct a risk assessment of the dwelling unit before rehabilitation work begins, see 24 CFR 35.930(d)(2) • abate all LBP hazards identified in the risk assessment, paint testing, or created by renovation or repairs; except that interim controls may be used on exterior surfaces not disturbed by the rehabilitation, see 24 CFR 35.930(d)(3) • perform a clearance examination of the affected site, see 24 CFR 35.1330(a)(3) • perform ongoing LBP maintenance, see 24 CFR 35.1355(a) and (b), on the renovated housing while it is owned by FSA.

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2 Implementation Responsibilities (Continued)

D

Loans for Repair or Renovation of Target Housing

FSA must ensure that LBP hazards are minimized during renovation or repair of target housing funded in part or in full by FSA loans.

In all cases, FSA must ensure and document that the property owner performs paint testing on all painted surfaces that will be disturbed or replaced during renovation or repair work or presumes that these painted surfaces are coated with LBP, see 24 CFR 35.930(a).

If there are occupants other than the immediate family of the property owner living in the target housing being renovated, the property owner must:

- provide LBP informational pamphlet to occupants, see 24 CFR 35.910
- provide notice to the occupants of the results of LBP hazard evaluation and reduction activity, see 24 CFR 35.125(a) and (b).

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2 Implementation Responsibilities (Continued)

D

Loans for Repair or Renovation of Target Housing (Continued)

FSA must ensure that the property owner or borrower implements and documents the following additional practices based on the amount of the loan for repairs or renovations.

IF the amount of FSA funding is...	THEN the owner or borrower must...
less than or equal to \$5,000 and LBP was found or assumed to be present on surfaces to be disturbed or replaced	<ul style="list-style-type: none">• implement safe work practices, see 24 CFR 35.930(b)(2)• repair disturbed paint surfaces, see 24 CFR 35.930(b)(2)• perform a clearance examination of the worksite, see 24 CFR 35.930(b)(3).
greater than \$5,000 and less than or equal to \$25,000	<ul style="list-style-type: none">• conduct a risk assessment of the dwelling unit before rehabilitation work begins, see 24 CFR 35.930(c)(2)• establish interim control of all LBP hazards identified in the risk assessment, paint testing, or created as a result of rehabilitation or renovation work, see 24 CFR 35.930(c)(3)• perform a clearance examination of the affected site, see 24 CFR 35.1330(a)(3).
greater than \$25,000	<ul style="list-style-type: none">• conduct a risk assessment of the dwelling unit before rehabilitation work begins, see 24 CFR 35.930(d)(2)• abate all LBP hazards identified in the risk assessment, paint testing, or created as a result of renovation or repair work; except that interim controls may be used on exterior surfaces not disturbed by the rehabilitation, see 24 CFR 35.930(d)(3)• perform a clearance examination of the affected site, see 24 CFR 35.1330(a)(3).

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2 Implementation Responsibilities (Continued)

E

Properties Exempt From the HUD Regulation

The following types of property and actions are exempt from the HUD regulation:

- housing built after 1978
 - housing exclusively for the elderly or for people with disabilities, unless a child under age 6 is expected to reside there
 - zero-bedroom dwellings, including efficiency apartments, single-room occupancy housing, dormitories, or military barracks
 - property where all lead-based paint has been removed
 - unoccupied property that will remain vacant until it is demolished
 - non-residential property
 - any rehabilitation or housing improvement that does not disturb a painted surface
 - emergency repair actions needed to safeguard against imminent danger to human life, health, or safety, or to protect property from further structural damage
 - residences sold or leased under the Homestead Protection Program.
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3 Reference Information

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LBP Information Sources

EPA, HUD, and CPSC have jointly produced an LBP awareness pamphlet entitled, "Protect your Family from Lead in Your Home." Sellers and lessors of target housing must provide this pamphlet to buyers and renters. It is available in English and Spanish from EPA. Ordering information for the pamphlet, as well as other lead information may be obtained by calling the National Lead Information Clearinghouse at 1-800-424-LEAD. Both EPA and HUD have the following websites that provide additional LBP information including electronic versions of the LBP pamphlet and the disclosure forms:

The EPA site is located at: <http://www.epa.gov/lead/index.html>

The HUD site is located at: <http://www.hud.gov/offices/lead/index.cfm>

Note: See Exhibits 2 and 3.

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3 Reference Information (Continued)

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**LBP Information
Sources
(Continued)**

Contact the appropriate regional EPA office to identify companies that are certified to perform LBP inspections, risk assessments, and abatement in specific States. A listing of lead service providers, lead inspectors, risk assessors, and abatement contractors, renovators trained in lead-safe practices (lead-trained renovators), EPA-recognized lead analysis laboratories, and Lead Training Providers can also be found on the website <http://www.leadlisting.org> or by telephone at: 1-888-LEADLIST.

Contract Contingency Language for LBP Inspection

This contract is contingent upon a lead-based paint inspection or risk assessment of the property for the presence of lead-based paint and/or lead-based paint **hazards** at the Purchaser's expense until 9 p.m. on the tenth calendar day after ratification. (Intact lead-based paint that is in good condition is not necessarily a hazard. See the Environmental Protection Agency pamphlet *Protecting Your Family From Lead in Your Home* for more information.) This contingency will terminate on [***Insert date 10 days after contract ratification or a date mutually agreed upon***] unless the Purchaser (or the Purchaser's agent) delivers to the Seller (or the Seller's agent) a written contract addendum listing specific and previously undisclosed deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within 5 days after the Delivery of the addendum, elect in writing whether to correct the conditions prior to settlement. If the Seller will correct the conditions, the Seller shall furnish the Purchaser with certification from a risk assessor or inspector demonstrating that the conditions have been remedied before the date of settlement. If the Seller does not elect to make repairs, or if the Seller makes a counter offer, the Purchaser shall have 5 days to respond to the counter-offer or remove this contingency and take the property in "as is" condition or this contract shall become void. The Purchaser may remove this contingency at any time without cause.

Notification and Disclosure Statement for Property Sales

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Seller's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) _____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) _____ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the seller (check (i) or (ii) below):

(i) _____ Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

(ii) _____ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Purchaser's Acknowledgment (initial)

(c) _____ Purchaser has received copies of all information listed above.

(d) _____ Purchaser has received the pamphlet *Protect Your Family from Lead in Your Home*.

(e) Purchaser has (check (i) or (ii) below):

(i) _____ received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or

(ii) _____ waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Agent's Acknowledgment (Initial)

(f) _____ Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

_____ Seller	_____ Date	_____ Seller	_____ Date
_____ Purchaser	_____ Date	_____ Purchaser	_____ Date
_____ Agent	_____ Date	_____ Agent	_____ Date

Notification and Disclosure Statement for Property Leases

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) _____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) _____ Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the lessor (check (i) or (ii) below):

(i) _____ Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

(ii) _____ Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgment (initial)

(c) _____ Lessee has received copies of all information listed above.

(d) _____ Lessee has received the pamphlet *Protect Your Family from Lead in Your Home*.

Agent's Acknowledgment (initial)

(e) _____ Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

_____ Lessor	_____ Date	_____ Lessor	_____ Date
_____ Lessee	_____ Date	_____ Lessee	_____ Date
_____ Agent	_____ Date	_____ Agent	_____ Date